

NO. 21077

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 26 1969

JACK C. WILLIAMS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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APPELLEE'S BRIEF

I

STATEMENT OF PLEADINGS AND FACTS
DISCLOSING JURISDICTION

On December 15, 1965, the Federal Grand Jury for the Southern District of California returned an indictment in sixteen counts, naming as defendants the appellant, Jack C. Williams, and five other persons. Appellant was named as defendant in Counts One, Twelve, Thirteen and Fourteen of the indictment; however, Count One, which charged a conspiracy among all six defendants in violation of Title 18, United States Code, Section 371, and Count Fourteen, were dismissed on February 10, 1966, as to appellant, prior to the swearing of the Government's first



witness at the trial below [R. T. 77]. 1/

Count Twelve of the indictment reads as follows:

"On or about November 19, 1965, in Orange County, within the Central Division of the Southern District of California, defendant JACK C. WILLIAMS, with intent to defraud, passed, uttered, published and sold a \$100 Federal Reserve counterfeit note, bearing serial number L-14478740-C, a falsely made, forged and counterfeited obligation and security of the United States as the defendant then and there well knew."

Count Thirteen of the indictment reads as follows:

"On or about November 19, 1965, in Orange County, within the Central Division of the Southern District of California, defendant JACK C. WILLIAMS, without authority from the Secretary of the Treasury or any other proper official, had in his possession and custody counterfeit Federal Reserve note, bearing serial number L-14478740-C, an obligation and security issued under the authority of the United States, knowing the same to be falsely made, forged and counterfeited, with intent to sell and use the same."

1/ "R. T." refers to the Reporter's Transcript herein.

On February 9, 1966, all five of appellant's co-defendants entered pleas of guilty to various counts of the indictment. Appellant's own plea of not guilty, which had been entered on January 3, 1966, continued in effect, and a jury was then sworn to try appellant on Counts One, Twelve, Thirteen and Fourteen of the indictment [R. T. 50]. On February 10, 1966, as hereinabove noted, Counts One and Fourteen of the indictment were dismissed. Jury trial commenced on February 10, 1966, and concluded on February 11, 1966, when the jury returned a verdict of guilty against appellant on Counts Twelve and Thirteen of the indictment.

On March 21, 1966, after the court denied a motion for a new trial [R. T. 217], judgment of conviction was entered against appellant on Counts Twelve and Thirteen of the indictment. At the same time, appellant was sentenced to a term of ten years imprisonment on each of the two counts, to run concurrently, and bond on appeal was set at \$4,000 [R. T. 219-220].

Appellant filed a timely notice of appeal on March 21, 1966 [C. T. 54]. 2/

Jurisdiction of the District Court for the Southern District of California, Central Division, was based on Title 18, United States Code, Sections 472 and 3231.

Jurisdiction of this Court is based on Title 28, United States Code, Sections 1291 and 1294(1).

2/ "C. T." refers to the Clerk's Transcript herein.

II

STATUTES INVOLVED

Title 18, United States Code, Section 472, provides:

"Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than \$5,000 or imprisoned not more than fifteen years, or both."

III

QUESTIONS PRESENTED

1. Was the search made of appellant's apartment by Agents of the United States Secret Service on or about November 21, 1965 an illegal search?
2. Is the question of the competence or effectiveness of appellant's trial counsel properly before this Court?
3. Was appellant denied a right to subpoena witnesses at the trial below?

IV

STATEMENT OF FACTS

On November 19, 1965, at about eight or nine o'clock P. M., appellant, accompanied by one other man, visited the Whistler Liquor Store in Long Beach, California [R. T. 55, 103-104]. On duty at the liquor store was clerk Max Schwab [R. T. 103]. Appellant ordered from Schwab three bottles of Chivas Regal Scotch whiskey, some drink mix, and a pack of cigarettes [R. T. 104]. Appellant gave Schwab a \$100 Federal Reserve note for his purchase, and received about \$70 change [R. T. 104, 105, 106]. That Federal Reserve note, Government's Exhibit 2 below, was counterfeit, and was stipulated to be so at trial [R. T. 119-120].

Also on November 19, 1965, at about 10:30 or 11:00 o'clock P. M., again accompanied by another man, appellant visited the Westminster Liquor Store in Westminster, California [R. T. 82-83]. At that time he engaged the store clerk, Marie Eddy, in conversation for about fifteen minutes [R. T. 83]. Appellant purchased three more bottles of Chivas Regal Scotch whiskey, some beer and a pack of cigarettes, and in payment presented to Mrs. Eddy a second counterfeit \$100 Federal Reserve note [R. T. 84, 119-120]. Appellant told Mrs. Eddy that he was purchasing the whiskey for a party being planned for the brother of his companion [R. T. 85].

Subsequently, on November 22, 1965, appellant was arrested by agents of the United States Secret Service at his

apartment in Wilmington, California [R. T. 163].

V

ARGUMENT

A. THE SEARCH MADE OF APPELLANT'S
APARTMENT BY AGENTS OF THE
UNITED STATES SECRET SERVICE ON
OR ABOUT NOVEMBER 12, 1965 WAS
A LEGAL AND PROPER ONE.

At the trial below, Darwin Horn, an agent of the United States Secret Service who participated in the investigation of appellant's case, testified concerning the circumstances of appellant's arrest and of the search of appellant's apartment attendant thereto. Agent Horn testified that on November 22, 1965, at about 9:00 P. M., he personally arrested appellant at appellant's residence, the El Monterey Hotel, located at 233 Avalon in Wilmington, California [R. T. 111].

After arresting appellant, Agent Horn participated in a search of appellant's apartment, where the arrest occurred. Found in the search, in the bedroom of the apartment, were various bottles of liquor, including a total of eleven bottles of Chivas Regal Scotch whiskey [R. T. 113].

The search incident to appellant's arrest is attacked by appellant as an unlawful search, and appellant thus argues in his brief that the reference in Agent Horn's testimony to the Chivas Regal Scotch (the same brand as had been purchased by appellant

at the two liquor stores) should not have been allowed into evidence.

At the time of hearing of appellant's Motion to Suppress evidence of the product of the search, in the Court below, it was agreed that the only issue concerning the search was the existence of probable cause for appellant's arrest on November 22, 1965 [R. T. 52-53]. At that hearing concerning probable cause for the arrest, Agent Horn testified substantially as follows concerning probable cause:

On the night of November 19, 1965, Horn interviewed Max Schwab of the Whistler Liquor Store. Schwab told him that a man had presented to him that same evening a \$100 bill which Schwab believed to be counterfeit. Horn examined the bill and determined that it was indeed counterfeit. Schwab told Horn that when the note had been given to him he felt there was something wrong with it and he therefore asked his assistant, one Steve Meyer, to follow the passer of the bill and obtain the license number of his car. This license number had been reported by Meyer to be LMY 123, a 1965 California license plate. The car was a 1961 beige Lincoln [R. T. 55-56].

Through the facilities of the California Department of Motor Vehicles, Horn determined that license LMY 123 was registered to appellant, Jack C. Williams [R. T. 56]. Horn looked for the car in Long Beach on the 19th and 20th of November, 1965.

In addition, Horn on November 22nd was told by one Leland Potter that appellant had passed counterfeit bills and that Potter



had given counterfeit bills to appellant. Horn was also told by Pat and June Carter that Williams had been involved in the passing and distribution of counterfeit \$10 and \$100 bills in the area of Wilmington, California [R. T. 60]. Horn chose a time to arrest appellant (November 22, 1965 at about 9:00 P.M.) when he believed that both appellant and appellant's father would be at the El Monterey Hotel [R. T. 59].

Based upon the foregoing, the trial court denied the Motion to Suppress [R. T. 71] and held there was sufficient probable cause for appellant's arrest.

It is submitted that the foregoing facts speak for themselves and that there was clearly sufficient probable cause for appellant's arrest at the El Monterey Hotel on November 22, 1965. This being so, the search of appellant's apartment incident to his arrest, which turned up several bottles of Chivas Regal whiskey, was also lawful.

Harris v. United States, 331 U.S. 145 (1947);
United States v. Rabinowitz, 339 U.S. 56 (1950);
Burks v. United States, 287 F.2d 117
(9th Cir. 1961).

The whiskey was found in the bedroom of appellant's apartment, certainly an area of the premises under appellant's custody and control which could lawfully be searched incident to his arrest.

Accordingly, no error appears in the trial court's admission of Agent Horn's testimony concerning the bottles of Chivas



Regal whiskey found during the search of appellant's bedroom.

B. THE QUESTION OF THE COMPETENCE
OR EFFECTIVENESS OF APPELLANT'S
TRIAL COUNSEL IS NOT PROPERLY
BEFORE THIS COURT.

In his brief (pp. 23-25) appellant complains that his trial counsel failed to call as witnesses certain co-defendants who had entered their pleas of guilty to the indictment. These witnesses are not named, but appellant appears to be arguing that the failure to call them constituted incompetence on the part of trial counsel, and deprived appellant of his right to counsel at the trial. There is no authority for this position, nor was the trial court asked by appellant to require the presence of any of these witnesses.

Not having objected or preserved any objection to the character of his representation at trial, appellant is foreclosed on appeal from raising the issue.

Billeci v. United States, 290 F.2d 628

(9th Cir. 1961);

Fraker v. United States, 294 F.2d 859

(9th Cir. 1961);

Ramirez v. United States, 294 F.2d 277

(9th Cir. 1961);

O'Neal v. United States, 310 F.2d 175

(9th Cir. 1961).

C. APPELLANT WAS NOT DENIED A
RIGHT TO SUBPOENA WITNESSES
AT THE TRIAL BELOW.

The Government is in entire agreement with the position stated by appellant at pages 25 through 38 of his brief, to the effect that appellant had a right to call his co-defendants who had pleaded guilty as witnesses in his own behalf. But the further contention, that appellant was deprived by the trial court of the right to subpoena these witnesses, is without support in the record.

The trial court initially allowed appellant a period of nearly one day to find and subpoena the witnesses [R. T. 5] with more time available if needed. Thereafter, the record shows no effort on the part of appellant or his counsel to effect service of the subpoenas or to obtain more time to do so. Under the circumstances, no error appears on the part of the trial court.

CONCLUSION

For the reasons stated above, the judgment of conviction should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Michael Heuer
MICHAEL HEUER

